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Majlis Daerah Dungun v Tenaga Nasional Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W–01–101 OF 2004

B MOKHTAR SIDIN, MOHD GHAZALI AND AUGUSTINE PAUL JJCA

3 MAY 2006

Local Government — Rates — Annual value — Objection to proposed annual value —

C *Negotiation to reduce rate — Failure to make written objection or appeal to High Court — Interim payments to local authority made — Whether local authority by entering into negotiations and by accepting 'interim payments' was estopped from relying on original assessment — Local Government Act 1976 ss 144 & 145*

D *Public Authorities — Estoppel — Plea of estoppel against public corporation — Whether estoppel apply against local authority from imposing assessment rates*

Revenue Law — Property tax — Assessment — Failure to pay annual assessment rate —

E *Negotiation to reduce rate — Failure to make written objection or appeal to High Court — Interim payments to local authority made — Whether local authority by entering into negotiations and by accepting 'interim payments' was estopped from relying on original assessment — Local Government Act 1976 ss 144 & 145 —*

F *Revenue Law — Property tax — Objection to proposed annual value — Negotiation to reduce rate — Failure to make written objection or appeal to High Court — Interim payments to local authority made — Whether local authority by entering into negotiations and by accepting 'interim payments' was estopped from relying on original assessment — Local Government Act 1976 ss 144 & 145*

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The plaintiff ('the appellant') was a local authority within the meaning of the Local Government Act 1976 ('the Act'). The defendant ('the respondent') was a public listed company which supplied electricity. The respondent owned and operated the

H Sultan Ismail Paka Power Station ('the holding') situated within the jurisdiction of the appellant and which had been in operation since 1987.

On 13 May 1991, the appellant had issued a Notice of Amendment to the Valuation List for the holding to the respondent under s 144 of the Act ('the notice'). In the notice, the annual value of the holding was stated as being RM123,000,000.

I The respondent did not lodge an objection and did not appeal to the High Court by way of originating motion as specified in ss 144 and 145 of the Act and neither did it pay the rate imposed as specified in the notice. Therefore, on 5 August 1991, the appellant issued an assessment bill based on the notice to the respondent for the second half of the year 1991 stating that the assessment rate of RM3,075,000, representing half of the annual assessment rate of RM6,150,000, was due and

payable. The respondent did not make any payment for the sum of RM3,075,000 but instead conducted negotiations with the appellant. Due to the length of time taken for negotiations, the respondent decided to make an 'interim payment' of various amounts to the appellant.

By letter dated 17 June 1996, the appellant's solicitors wrote a letter of demand to the respondent claiming that it had failed to pay the balance of the rates due on the holding since 1991 totalling a sum of RM31,625,000. Since no payment was forthcoming, on 5 July 1996 the appellant filed this action. It was the appellant's case that the respondent failed and/or neglected to take any of the steps specified in ss 144 and 145 of the Act and wrongfully and in breach of the provisions of the Act, failed to pay the annual assessment rate as specified in the notice.

The respondent disputed the legality of the inclusion of the value of machinery in the appellant's computation of annual value and/or assessment of the holding as the bulk of its machinery were producing 'articles' and hence were exempted from rates. Further, the respondent disputed the validity of the valuation made by the appellant and pointed out that the matter was under negotiation for settlement. The respondent also referred to the decision of a tribunal set up pursuant to art 156 of the Federal Constitution to decide on the liability of LLN, the predecessor of the respondent, to pay 'contribution in aid of rates' on its power stations in other locations. Pursuant to the decision of the tribunal, the appellant had subsequently to a certain extent adopted the tribunal's decision in Case 1/94 by excluding the value of machinery from its claim.

In its reply in relation to this, the appellant contended that there was no agreement to be bound by the tribunal's decision and that the interim payments were only temporary, pending final settlement. The respondent relied on the estoppel principle and contended that the appellant has waived its right to revert to its original assessment claim as there were amended assessment bills or claims sent to the respondent subsequently.

On 14 October 2004, the learned judge of the High Court dismissed the appellant's claim with costs and simultaneously dismissed the respondent's counterclaim with costs. The appellant appealed and the respondent cross-appealed. The learned judge was of the view that the appellant, by entering into negotiations, no doubt at the instance of the respondent, and by accepting 'interim payments' and by agreeing to abide by the ruling of the Tribunal, was estopped from imposing the rates that it did on the holding vide the notice.

Held, allowing the appeal and dismissing the cross-appeal:

(1) The doctrine of estoppel did not apply here. The rates imposed by the appellant vide the notice had become due and payable as from 1 July 1991 under the Act and to admit estoppel against the appellant, it being a public authority, would have the effect of nullifying the provisions of the Act (see para 31).

(2) Since the respondent was aggrieved by the amendment of the Valuation List upon receipt of the notice, the respondent had to make an objection in writing to the appellant under s 144(3) of the Act. After the hearing, if the respondent

A was still dissatisfied with the decision of the appellant, it may appeal to the High Court by way of Originating Motion as provided under s 145(1) of the Act but even then, the respondent must pay the amount of the rate appealed against to the appellant notwithstanding it had filed the appeal. Thus, the filing of the appeal does not operate as a stay against payment of the rate imposed. B These are the statutory provisions which need to be adhered to by the parties as provided under the Act. But then the respondent did not do what was required of the respondent to do under the Act but instead entered into lengthy negotiations with the appellant which is definitely not what is contemplated under the Act (see para 39).

C (3) It is prohibited by the doctrine of ultra vires for the respondent to enter into negotiations with the appellant with the view of seeking a reduction of the rate imposed by the appellant instead of resorting to the provisions under the Act if at all it was aggrieved by the rate imposed (see para 40).

D (4) The respondent did not lodge any written objection with the appellant against the notice, did not pay the annual rate imposed but chose to make annual 'interim payments', on its own volition and estimation at that, which fell far below the annual rate imposed by the appellant and upon being sued for the unpaid balance of the annual rates raised a defence of estoppel against the E appellant and counterclaim, inter alia, for a declaration that the notice was ultra vires the Act. Estoppel could not be raised against the appellant in such circumstances, it being a public authority and a body which was authorised under the Act to impose and collect rates for purposes under the Act (see para 42).

F (5) Article 156 only relates to lands, buildings, or hereditaments which are occupied for public purposes by or on behalf of the Federation, a State or a public authority. Such holdings shall not be liable to pay local rates but shall in aid of those rates pay such contributions as may be agreed between the Federation, State or public authority. The respondent was clearly not a public G authority and as such the decision of the tribunal could not have any bearing on the circumstances of this appeal. That the parties had agreed to abide by the decision of the tribunal in Case 1/94 as a mode of settling this dispute was prohibited by the doctrine of ultra vires (see para 45).

(6) The contention of the respondent that the appellant was estopped and had H waived its right to revert to the rate specified in the notice as this had been superseded by subsequent events, including the acceptance of annual 'interim payments' and by subsequent amended bills, could not stand at all (see para 46).

I (7) The annual assessment rate of RM6,150,000 as specified in the notice had become final and conclusive and thus the liability of the respondent to pay the same has been determined under the provisions of the Act. Unless the rate imposed under the notice is challenged in the specific manner laid down in ss 144 and 145 of the Act, the rates become due and payable by the respondent (see para 47).

[Bahasa Malaysia summary

Plaintif ('perayu') adalah satu pihak berkuasa tempatan dalam erti kata Akta Kerajaan Tempatan 1976 ('Akta tersebut'). Defendan ('responden') merupakan sebuah syarikat awam yang tersenarai yang membekalkan elektrik. Responden memiliki dan menguruskan Stesen Janakuasa Sultan Ismail Paka ('pegangan tersebut') yang terletak di dalam bidang kuasa perayu dan yang mana telah mula beroperasi semenjak 1987.

Pada 13 Mei 1991, perayu mengeluarkan satu Notis Pindaan kepada Senarai Penilaian bagi pegangan tersebut kepada responden di bawah s 144 Akta tersebut ('notis tersebut'). Di dalam notis tersebut, nilai tahunan pegangan tersebut dinyatakan sebanyak RM123,000,000. Responden tidak memasukkan sebarang bantahan dan tidak merayu ke Mahkamah Tinggi melalui usul pemula sebagaimana yang diperuntukkan di bawah ss 144 dan 145 Akta tersebut dan tidak juga membayar kadar yang dikenakan sebagaimana yang dinyatakan di dalam notis tersebut. Dari itu, pada 5 Ogos 1991, perayu mengeluarkan satu bil taksiran berdasarkan notis tersebut kepada responden untuk setengah tahun kedua bagi tahun 1991 menyatakan kadar taksiran sebanyak RM3,075,000, mewakili separuh dari kadar taksiran tahunan sebanyak RM6,150,000, yang mana perlu dan kena bayar. Responden tidak membuat sebarang pembayaran untuk jumlah RM3,075,000 tetapi sebaliknya membuat perundingan dengan perayu. Disebabkan masa yang lama diambil untuk rundingan, responden mengambil keputusan untuk membuat 'bayaran interim' untuk berbagai jumlah kepada perayu.

Melalui surat bertarikh 17 Jun 1996, peguamcara perayu menulis sepucuk surat tuntutan kepada responden menuntut bahawa ia telah gagal untuk membayar baki kadaran yang kena dibayar ke atas pegangan tersebut semenjak 1991 berjumlah RM31,625,000. Oleh kerana tiada bayaran dibuat, pada 5 Julai 1996 perayu memfailkan tindakan ini. Kes perayu adalah bahawa responden telah gagal dan/atau cuai untuk mengambil sebarang langkah sepertimana yang diperuntukkan di bawah ss 144 dan 145 Akta tersebut dan telah secara salah serta mengingkari Akta tersebut, gagal membayar kadar taksiran tahunan sebagaimana yang dinyatakan di dalam notis tersebut.

Responden mempertikaikan kesahan kemasukan nilai mesin di dalam kiraan perayu dalam mengira nilai tahunan dan/atau taksiran pegangan tersebut kerana sebahagian dari mesin tersebut mengeluarkan 'artikel-artikel' dan dari itu terkecuali dari kadaran. Selanjutnya, responden mempertikaikan kesahan penilaian yang dibuat oleh perayu dan menyatakan bahawa perkara tersebut sedang dalam rundingan untuk penyelesaian. Responden juga merujuk keputusan tribunal yang ditubuhkan di bawah perkara 156 Perlembagaan Persekutuan untuk memutuskan liabiliti LLN, responden terdahulu, untuk membayar 'sumbangan bagi membantu kadaran' ke atas stesen-stesen janakuasa di tempat-tempat lain. Menurut keputusan tribunal tersebut, perayu telah kemudiannya sedikit sebanyak telah menggunapakai keputusan tribunal dalam Kes 1/94 dengan mengecualikan nilai mesin dari tuntutannya.

Dalam jawapannya berhubung dengan perkara ini, perayu mendakwa bahawa tidak terdapat sebarang perjanjian terikat oleh keputusan tribunal tersebut dan bahawa bayaran interim tersebut adalah berbentuk sementara, sementara menunggu penyelesaian muktamad. Responden bergantung kepada prinsip estopel dan

mendakwa bahawa perayu telah mengabaikan hak-haknya untuk kembali kepada tuntutan taksiran asalnya kerana terdapat bil taksiran terpinda atau tuntutan yang dihantar oleh responden kemudiannya.

Pada 14 Oktober 2004, yang arif hakim mahkamah tinggi menolak tuntutan perayu dengan kos dan secara serentak menolak tuntutan balas responden dengan kos. Perayu merayu dan responden merayu silang. Yang arif hakim berpendapat bahawa perayu, dengan memasuki rundingan-rundingan, secara tidak sangsi pada pihak responden, dan dengan menerima 'bayaran interim' dan dengan bersetuju untuk mematuhi keputusan Tribunal tersebut, telah diestop dari mengenakan kadaran yang dikenakannya pada pegangan tersebut secara notis.

Diputuskan, membenarkan rayuan dan menolak rayuan balas:

(1) Doktrin estopel tidak terpakai di sini. Kadaran yang dikenakan oleh perayu melalui notis tersebut telah menjadi perlu dan kena dibayar sejak 1 Julai 1991 di bawah Akta tersebut dan untuk mengakui estoppel terhadap perayu, yang merupakan sebuah pihak berkuasa awam, akan memberi kesan membatalkan pada peruntukkan-peruntukkan Akta tersebut (lihat perenggan 31).

(2) Oleh kerana responden telah terkilan dengan pindaan Senarai Taksiran tersebut pada penerimaan notis tersebut, responden hendaklah membuat bantahan secara bertulis kepada perayu di bawah s 144(3) Akta tersebut. Selepas bicara, jika responden masih tidak puas hati dengan keputusan perayu, ia boleh merayu ke Mahkamah Tinggi melalui Usul Pemula sebagaimana yang diperuntukkan di bawah s 145(1) Akta tersebut dan namun begitu, responden mesti membayar jumlah kadaran yang dirayu itu kepada perayu walaupun ia telah memfailkan rayuan ini. Dari itu, pemfailan rayuan ini tidak bertindak sebagai satu penggantungan terhadap bayaran kadaran yang dikenakan. Ini adalah peruntukan berkanun yang perlu dipatuhi oleh pihak-pihak sebagaimana yang diperuntukkan di bawah Akta tersebut. Tetapi responden bertindak sebagaimana yang sepatutnya dibuat oleh responden di bawah Akta tersebut dan sebaliknya ia telah memasuki rundingan dengan perayu yang tidak langsung diperuntukkan di bawah Akta tersebut (lihat perenggan 39).

(3) Adalah terlarang oleh doktrin ultra vires bagi responden untuk memasuki rundingan dengan perayu bagi tujuan untuk meminta pengurangan terhadap kadaran yang dikenakan oleh perayu di sebalik mengambil jalan keluar dengan merujuk kepada peruntukan-peruntukan di bawah Akta tersebut jika ianya terkilan dengan kadaran yang dikenakan (lihat perenggan 40).

(4) Responden tidak memasukkan sebarang bantahan bertulis dengan perayu terhadap notis tersebut, tidak membayar kadaran tahunan yang dikenakan tetapi memilih untuk membuat 'bayaran interim' tahunan, dengan kerelaan sendiri dan pada anggaran bahawa, yang mana jauh di bawah kadaran tahunan yang dikenakan oleh perayu dan selepas disaman untuk baki kadaran tahunan yang tidak dibayar, membangkitkan pembelaan estopel terhadap perayu dan membuat tuntutan balas, antara lain, untuk satu pengisytiharan bahawa notis tersebut adalah ultra vires dengan Akta tersebut. Estopel tidak dapat dibangkitkan terhadap perayu dalam keadaan sedemikian, ianya adalah satu

pihak berkuasa awam dan satu badan yang diberikuasa di bawah Akta tersebut untuk mengenakan dan mengutip kadaran untuk tujuan Akta tersebut (lihat perenggan 42).

(5) Artikel 156 hanya berkenaan tanah, bangunan atau harta-harta yang boleh diwarisi yang mana dihuni untuk kegunaan awam oleh atau bagi pihak Kerajaan Persekutuan, Kerajaan Negeri atau pihak berkuasa awam. Pegangan sedemikian tidak akan tertakluk untuk membayar kadaran tetapi akan membantu dengan membayar sumbangan sebagaimana yang dipersetujui di antara Kerajaan Persekutuan, kerajaan negeri atau pihak berkuasa awam. Responden dengan jelasnya bukan sebuah badan berkuasa awam dan dari itu keputusan tribunal tidak dapat mempunyai apa-apa kesan kepada keadaan-keadaan rayuan ini. Bahawa pihak-pihak telah bersetuju untuk mematuhi keputusan tribunal dalam Kes 1/94 sebagai satu cara penyelesaian pertikaian ini tidak dihalang oleh doktrin ultra vires (lihat perenggan 45).

(6) Dakwaan responden bahawa perayu diestop dan telah mengabaikan haknya untuk kembali kepada kadaran yang dinyatakan di dalam notis tersebut kerana ia telah digantikan oleh keadaan-keadaan selepas itu, termasuklah penerimaan 'bayaran interim' tahunan dan juga bil yang terpinda, tidak terpakai (lihat perenggan 46).

(7) Kadar taksiran tahunan sebanyak RM6,150,000 sebagaimana yang dinyatakan di dalam notis tersebut telah menjadi muktamad dan terputus dan oleh yang demikian tanggungjawab responden untuk membayarnya telah diputuskan di bawah peruntukan-peruntukan Akta tersebut. Melainkan jika kadaran yang dikenakan di bawah notis tersebut dipertikaikan dalam cara yang telah ditentukan sebagaimana yang terkandung di dalam ss 144 dan 145 Akta tersebut, kadaran tersebut menjadi perlu dan kena bayar oleh responden (lihat perenggan 47).]

Notes

For a case on objection to proposed annual value, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) para 2370.

For a case on plea of estoppel against public corporation, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) para 1653.

For cases on assessment of property tax, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 2339–2344.

For cases on rates of annual value, see 10 *Mallal's Digest* (4th Ed, 2002 Reissue) paras 136–137.

Cases referred to

Mayor, Alderman and Councillors of the Metropolitan Borough of Stepney, The v John Walker & Sons, Limited [1934] AC 365 (refd)

Yee Seng Rubber Co Sdn Bhd v The Commissioner of the Federal Capital of Kuala Lumpur [1972] 2 MLJ 21 (refd)

Legislation referred to

Electricity Act 1949
Electricity Supply (Successor Company) Act 1990 s 3

Factories and Machinery Act 1967
Federal Constitution art 156
Local Government Act 1976 ss 2, 39, 72, 127, 130, 137, 141, 142, 144, 145
Town Board Enactment

Appeal from: Civil Suit No S1–21–81 of 1996 (High Court, Kuala Lumpur)

Tommy Thomas (Alan Adrian Gomez with him) (Tommy Thomas) for the appellant.
Goh Peng Hong (Rajinder Singh with him (Bakar & Partners) for the respondent.

Mohd Ghazali JCA (delivering judgment of the court):

[1] The appellant (the plaintiff in the court below) is a local authority within the meaning of the Local Government Act 1976 ('the Act'). The respondent (the defendant in the court below) is a public listed company which supplies electricity. The respondent is the successor company to the Lembaga Letrik Negara ('LLN'), a statutory body established under the Electricity Act 1949, and has taken over all property, rights and liabilities of the LLN on 1 September 1990 as provided for by s 3 of the Electricity Supply (Successor Company) Act 1990. The respondent owns and operates the Sultan Ismail Paka Power Station ('the said holding') situated within the jurisdiction of the appellant and which has been in operation since 1987. The said holding comprise of more than 13 buildings including a power generating plant and is constructed on a piece of land measuring approximately 83 hectares or 201 acres.

[2] On 5 July 1996, the appellant filed this action. The appellant's claim against the respondent is for the recovery of arrears of rate imposed on the said holding amounting to RM31,625,000 due and owing as at 31 December 1996 and for the annual rate of RM6,150,000 for each year from 1 January 1997 until realization less monies paid by the respondent in purported part payments and interest at the rate of 8% per annum from the date of filing the claim until final realization and costs.

[3] In opposing the claim, the respondent, based on its own valuation of the said holding, opined that the rates payable for the period between 1 July 1991 and 30 June 1996 amounted to only RM1,025,446 and since it had paid a total sum of RM2,200,000 to the appellant vide interim payments, it counterclaims against the appellant for the sum of RM1,174,554, that is, the difference between RM2,200,000 and RM1,025,446, and interest at the rate of 8% per annum until the date of full settlement and costs. The respondent has also prayed for a declaration that a notice of amendment to the valuation list issued by appellant on 13 May 1991 pursuant to s 144 of the Act is ultra vires and also null and void.

[4] On 14 October 2004, the learned judge of the High Court dismissed the appellant's claim with costs and simultaneously dismissed the respondent's counterclaim with costs. The appellant appealed and the respondent cross-appealed. On 11 May 2005, this court, in a unanimous decision, allowed the appeal by the appellant with costs and granted the orders prayed for in its amended statement of

claim and dismissed the appeal by the respondent with no order as to costs. I now give the reasons.

THE RELEVANT STATUTORY PROVISIONS

[5] It would be convenient at this stage to refer to the relevant statutory provisions of the Act before dealing with the facts leading to the dispute. Section 2 of the Act which is an interpretation provision provides that 'local authority' means, inter alia, any District Council. Section 127 of the Act provides that a local authority may impose the annual rate or rates within its local authority area for the purposes of the Act. Section 127, entitled 'Power to impose rates', reads:

> The local authority may, with the approval of the State Authority, from time to time as is deemed necessary, impose either separately or as a consolidated rate, the annual rate or rates within a local authority area for the purposes of this Act or for other purposes which it is the duty of the local authority to perform under any other written law.

[6] Under s 130 of the Act, a local authority may assess rates upon the annual value of holdings. Section 130, entitled 'Basis of assessment of rate', reads:

> (1) Any rate or rates imposed under this Part may be assessed upon the annual value of holdings or upon the improved value of holdings as the State Authority may determine.
>
> (2) If any rate or rates are assessed upon the annual value of holdings such rate or rates shall not exceed:
>
> (a) thirty five per centum of the annual value in the case of the rates imposed under s 127;
>
> (b) (Deleted);
>
> (c) five per centum of the annual value in the case of the rates imposed under s 132.
>
> (3) If any rate or rates are assessed upon the improved value of holdings such rate or rates shall not exceed:
>
> (a) five per centum of the improved value in the case of rates imposed under section 127
>
> (b) (Deleted);
>
> (c) one per centum of the improved value in the case of rates imposed under section 132.

[7] Section 2 of the Act provides that 'holding' means, inter alia, any land, with or without buildings thereon, which is held under a separate document of title. As to the meaning of the words 'annual value' s 2 of the Act provides:

> 'annual value' means the estimated gross annual rent at which the holding might reasonably be expected to let from year to year the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes:

A Provided that:

(a) …;

(b) in estimating the annual value of any holding in or upon which there is any machinery used for any or all of the following purposes:

B (i) the making of any article or part of an article;

(ii) the altering, repairing, ornamenting or finishing of any article;

(iii) the adapting for sale of any article,

the enhanced value given to the holding from the presence of such machinery shall not be taken into consideration, and for the purposes of this paragraph 'machinery' includes

C steam engines, boilers or other motive power belonging to such machinery;

(c) …;

(d) …;

D **[8]** Section 137 of the Act provides that a local authority shall prepare a valuation list of all holdings within its area and is also entitled to amend from time to time such valuation list pursuant to s 144 of the Act. Section 137, entitled 'Preparation of Valuation List', reads:

(1) The local authority shall cause a Valuation List of all holdings not exempted from the

E payment of rates to be prepared containing:

(a) the name of the street or locality in which such holding is situated;

(b) the designation of the holding either by name or number sufficient to identify it;

(c) the names of the owner and occupier, if known;

(d) the annual value or improved value of the holding.

F (2) The Valuation List together with the amendments made under section 144 shall remain in force until it is superseded by a new Valuation List.

(3) A new Valuation List which shall contain the same particulars as in subsection (1) shall be prepared and completed once every five years or within such extended period as the State Authority may determine.

G **[9]** Section 141 of the Act, entitled 'Notice of new Valuation List to be published', reads:

(1) Where any Valuation List has been prepared or adopted under the provisions of section

H 137 the local authority shall give notice of the same and of the place where the Valuation List or a copy thereof may be inspected in the Gazette and by way of advertisement in two local newspapers at least one of which is in the national language.

(2) Any person claiming to be either the owner or occupier of a holding included in the Valuation List or the agent of any such person may inspect the Valuation List and make extracts therefrom without charge.

I (3) The local authority shall give notice in the same manner of a day not being less than forty-two days from the date of notification in the Gazette when the local authority will proceed to revise the Valuation List and in all cases in which any holding is for the first time valued or the valuation thereon has increased the local authority shall also give notice to the owner or occupier thereof.

[10] Section 142 of the Act, entitled 'Objections', reads:

Any person aggrieved on any of the following grounds:

(a) *that any holding for which he is rateable is valued beyond its rateable value;*

(b) that any holding valued is not rateable;

(c) that any person who, or any holding which, ought to be included in the Valuation List is omitted therefrom;

(d) that any holding is valued below its rateable value; or

(e) that any holding or holdings which have been jointly or separately valued ought to be valued otherwise,

may make objection in writing to the local authority at any time not less than fourteen days before the time fixed for the revision of the Valuation List.

(2) *All objections shall be enquired into and the persons making them shall at such enquiry be allowed an opportunity of being heard either in person or by an authorised agent.* (Emphasis added.)

[11] Pursuant to s 144(1) of the Act, the Valuation Officer may at any time amend the Valuation List and rates shall be payable in respect of the holding in question in accordance with the Valuation List so amended. Section 2 of the Act provides that 'Valuation Officer' means any Valuation Officer appointed by the local authority and 'Valuation List' means a valuation list prepared under this Act. Section 144, entitled 'Amendments to Valuation List', reads:

(1) Where by reason of:

(a) a mistake, oversight or fraud the name of any person or the particulars of any rateable holding which ought to have been inserted in or omitted from the Valuation List, has been omitted from or inserted in the Valuation List, as the case may be, or any rateable holding has been insufficiently or excessively valued or for any other reason whatsoever any rateable holding has not been included in the Valuation List;

(b) any building erected, modified, altered, demolished or rebuilt, or other improvements made upon rateable holding the value thereof has been increased;

(c) any building or part of a building being demolished or any other works being carried out on the rateable holding the value thereof has been decreased;

(d) any rateable holding which has been included in a joint valuation and which in the opinion of the Valuation Officer ought to have been valued separately or otherwise;

(e) the issue of any new titles in respect of any holdings;

(f) any change to the rateable holding effected by any law relating to planning as a result of which the value of the holding has been increased or decreased,

the Valuation Officer may at any time amend the Valuation List accordingly and rates shall be payable in respect of the holding in question in accordance with the Valuation List so amended.

(2) *Notice shall be given to all persons interested in the amendment of a time, not less than thirty days from the date of service of such notice, at which the amendment is to be made.*

(3) *Any person aggrieved by the amendment of the Valuation List on any of the grounds specified in section 142 may make objection in writing to the local authority not less than ten days before the time fixed in the notice and shall be allowed an opportunity of being heard in person or by an authorised agent.*

(4) Any amendment made under this section may, at the discretion of the local authority, have regard to the level of annual values or improved value prevailing as at or about the time the current Valuation List was prepared.

(5) Any amendment made in the Valuation List in accordance with this section shall be confirmed by the local authority.

(6) Where on account of any amendment in the Valuation List the rate payable in respect of any holding is enhanced, reduced or extinguished, the new rate shall be payable, or the rate shall cease to be payable, from commencement of the next half year or such earlier date as the local authority may determine. (Emphasis added.)

[12] Section 145 of the Act provides that any person who, having made an objection in the manner prescribed by ss 142 or 144, is dissatisfied with the decision of the local authority thereon may appeal to the High Court by way of originating motion provided that with the filing of the originating motion, there shall be paid into the local authority the amount of the rate appealed against. The originating motion shall be filed by the person dissatisfied with the decision of the local authority within 14 days of the receipt thereof. Section 145, entitled 'Appeals', reads:

(1) *Any person who having made an objection in the manner prescribed by section 142 or 144 is dissatisfied with the decision of the local authority thereon may appeal to High Court by way of originating motion:*

Provided that with the filing of the originating motion there shall be paid into the local authority the amount of the rate appealed against.

(2) The originating motion shall be filed by the person dissatisfied with the decision of the local authority within fourteen days of the receipt thereof.

(3) The local authority shall be the respondent in any appeal under this section.

(4) Every such appeal shall be heard before the High Court whose decision on questions of fact shall be final and conclusive.

(5) From the decision of the High Court either party may appeal on questions of law to the Supreme Court whose decision shall be final and conclusive.

(6) In any appeal under subsection (5), the provisions of any written law for the time being in force relating to appeals in civil matters from the High Court in its appellate jurisdiction to the Supreme Court shall apply. (Emphasis added.)

THE BACKGROUND

[13] In November 1990, ie, after the respondent had taken over all property, rights and liabilities of the LLN, the appellant, in exercise of its powers under the Act, decided to conduct a rate assessment over the said holding. Consequently, on 13 May 1991, the appellant issued a Notice of Amendment to the Valuation List for the said holding to the respondent under s 144 of the Act ('the said notice'). In the said notice, the annual value of the said holding was stated as being RM123,000,000. The said notice, as translated, reads:

AMENDMENT TO THE VALUATION LIST

DATED: 13th May 1991

OUR LETTER () DLM/T/UK/D/KP/PT. 2457 & PT 2191

To:

SUPERVISOR,

SULTAN ISMAIL POWER STATION,

PAKA.

Sir/Madam,

Notice Of Amendment To The Valuation List

(Under Section 144 Of The Local Government Act).

This is to inform you that the Yang Di Pertua of the Dungun District Council will be amending the Valuation List of 1988 for the property mentioned below on 27th June 1991 and which will be effective beginning 1st July 1991.

HS(D) 340 & HS(D) 296

Lot No	Section Mukim	House No	Place	Annual Valuation $	Rate	Annual Assessment Rate $
PT 2467 And PT 2191	KUALA, Paka,	–	PAKA Dungun Terengganu	123,000,00	5%	6,150,000

Whosoever that is aggrieved in accordance with the grounds provided under Section 142, of the Local Government Act 1976 may make written objection to: The Secretary, Dungun District Council (Attn: Valuation Division) at any time not less than 10 days from the date fixed for confirmation of the ANNUAL VALUATION as stated above.

If there is no objection received within the time fixed, the Yang Di Pertua will enter the said ANNUAL VALUATION into the Valuation List, which shall be accepted as confirmed.

'BERKHIDMAT UNTUK NEGARA'

Saya yang menurut perintah,

sgd

(MAT AZMI BIN ARSHAD)

Secretary

Dungun District Council

cc:

REVENUE DIVISION

DUNGUN DISTRICT COUNCIL

[14] Thus, upon receipt of the said notice, the respondent, if aggrieved under any of the grounds provided under s 142 of the Act would, pursuant to the provisions of ss 144 and 145, have to do the following:

(i) pursuant to s 144(3) of the Act, make an objection in writing to the appellant;

(ii) having made such objection, if still dissatisfied with the decision of the appellant, appeal to the High Court by way of originating motion under s 145(1) of the Act; and

(iii) pursuant to s 145(1) of the Act, pay the appellant the amount of the rate appealed against at the time of filing the originating motion in the High Court.

[15] The respondent did not take any of the steps specified in ss 144 and 145 of the Act and neither did it pay the rate imposed as specified in the said notice. It would be appropriate to mention here that it is the appellant's contention that the last day for the respondent to lodge the objection was 19 June 1991. Thus, it is not disputed that the respondent did not lodge an objection and did not appeal to the High Court by way of originating motion pursuant to the provisions of the Act.

[16] On 5 August 1991, the appellant issued a 'Bil Taksiran' (assessment bill) to the respondent for the second half of the year 1991, that is, from 1 July 1991 to 31 December 1991 stating that the assessment rate of RM3,075,000, representing half of the annual assessment rate of RM6,150,000, was due and payable. The respondent did not make any payment for the said sum of RM3,075,000 but instead conducted negotiations with the appellant.

[17] By letter dated 4 October 1991, the respondent requested from the appellant a copy of its valuation report on the said holding for them to carry out further study regarding the rate imposed. That request was turned down by the appellant. Subsequently several meetings were held between the parties. Due to the length of time taken for negotiations, the respondent decided to make an "interim payment" for the year 1992 amounting to RM400,000. That payment was made on 30 July 1992. By letter dated 2 September 1992 the appellant wrote to the respondent enclosing a receipt for the said sum of RM400,000 and drawing its attention to the fact that the assessment was effective from 1 July 1991 and that it is of the opinion that in the event the respondent decides to pay RM400,000 as interim payment for the year 1992 for that purpose, it would also need to settle a further RM200,000, ie, the 'interim payment' for the rate due in the second half of the year 1991. In response to that letter, the respondent sent a cheque of RM200,000 as 'interim payment' of the rate due for the second half of the year 1991. In February 1993, the respondent made an 'interim payment' of RM427,384 which was for payment for the rate due for the year 1993 for the 'TNB quarters' and 'interim payment' for the said holding. As to whether the extra sum RM27,384 was meant for rate due and payable on the 'TNB quarters' was not enlightened by the respondent in the course of the proceedings.

[18] Be that as it may, by letter dated 23 November 1993, the respondent wrote a letter to the appellant which made reference to a Tribunal. That Tribunal was set up pursuant to art 156 of the Federal Constitution to decide on the liability of the LLN to pay 'contribution in aid of rates' on its power stations to Majlis Perbandaran Seberang Perai and four other local authorities, namely, Majlis Bandaraya Johor Bahru, Majlis Daerah Port Dickson, Majlis Daerah Cameron Highlands and Pihak Berkuasa Tempatan Pasir Gudang ('the said Tribunal'). That letter, as translated, inter alia, reads:

2. As you are aware, we have referred the matter regarding the claim in aid of contribution for a few of our power stations to the relevant Tribunal. The Tribunal began its proceedings on 14 October 1993. We will inform you of its decision later.

3. Whilst awaiting the Tribunal's decision, Tenaga Nasional Berhad will pay the interim amount of RM400,000 per annum while paying in full the claims for the holdings other than the power station especially the TNB staff quarters as agreed before.

[19] In February 1994, the respondent paid a sum of RM427,384 to the appellant as 'interim payment' for assessment for 1994 and for the 'TNB quarters'. In April 1995, the respondent paid a sum of RM441,757 which was 'interim payment' of assessment for the year 1995 for the said holding and payment of assessment for the first half for the year 1995 for the TNB quarters. In February 1996, the respondent paid a sum of RM436,966 to the appellant for the same purpose. Again it must be noted that there was an extra sum of RM41,757 and RM36,966 for the years 1995 and 1996 respectively which I would think was meant for the rate supposedly due on the 'TNB quarters'.

[20] Seeing that not much progress has been achieved and that the matter seemed to have reached a stalemate, the appellant, by letter dated 28 February 1996, wrote to the respondent; that letter, as translated, reads:

Sir,

Assessment for Sultan Ismail Power Station, Paka

Reference is made to the consultation which was held between both our parties on 18 October 1995 and 15 December 1995 regarding the above matter and unfortunately to-date we have yet to be informed officially on the decision of the consultation even though you had given us your assurance that a decision would be made within one month from the date of the first consultation (18 October 1995).

2. Since this matter has gone on for a long time and it appears that you are not serious in settling this matter through consultation, we have no option but to settle this matter through legal means. After this, no more consultation will be made with you in regards to the above matter.

[21] By letter dated 8 May 1996, the respondent informed the appellant that it had prepared its own report and valuation of the said holding and suggested that a meeting be held to discuss the matter. However, by letter dated 17 June 1996, the appellant's solicitors wrote a letter of demand to the respondent claiming that it has failed to pay the balance of the rates due on the said holding since 1991 totalling a sum of RM31,625,000 and stating that they will take legal action if the monies were not paid within seven days. As to how the total sum of RM31,625,00 was derived at is as follows:

Year	Assessment rate	Payment Received	Balance/Arrears
1991	3,075,000	–	3,075,000
1992	6,150,000	600,000	5,750,000
1993	6,150,000	400,000	5,750,000

1994	6,150,000	400,000	5,750,000
1995	6,150,000	400,000	5,750,000
1996	6,150,000	400,000	5,750,000
Total	33,825,000	2,200,000	31,625,000

[22] On 5 July 1996, the appellant filed this action. It is the appellant's case that the respondent failed and/or neglected to take any of the steps specified in ss 144 and 145 of the Act and wrongfully and in breach of the provisions of the Act, failed to pay the annual assessment rate as specified in the said notice. The appellant averred that the respondent has failed to pay a sum of RM31,625,000 which represented arrears due and payable until 31 December 1996 and that the respondent continues to be in arrears from 1 January 1997. The appellant states it brings these proceedings under s. 156 of the Act, entitled 'Arrear may be sued as debt', which reads:

> Notwithstanding anything herein, an arrear may be sued for and recovered as a debt in a court of competent jurisdiction by the local authority in its official name from any person liable to pay the same.

[23] In its amended statement of claim the appellant prayed for the following orders:

(a) the sum of RM31,625,000 representing the respondent's indebtedness as at 31 December 1996;

(b) the annual sum of RM6,150,000 for each year from 1 January 1997 until realization less monies paid by the respondent to the appellant in purported part payment;

(c) interest on the sums claimed in paras (a) and (b) above at the rate of 8% per annum from the date of filing of this claim until the final realization, or such rate and for such period as the court deems fit;

(d) costs; and

(e) further or other relief.

[24] In its defence, the respondent contended as follows:

(i) that the said notice is ultra vires the Act;

(ii) that electricity is an article, as provided for in the Electricity Supply Act 1990 and the Factories and Machinery Act 1967;

(iii) that machinery is exempt from rates by virtue of being chattels.

The respondent disputed the legality of the inclusion of the value of machinery in the appellant's computation of annual value and/or assessment of the said holding as the bulk of its machinery are producing 'articles' and hence are exempted from rates. Further, the respondent disputed the validity of the valuation made by the appellant and pointed out that the matter was under negotiation for settlement. Be that as it may, the respondent admitted that it neither made objection in writing to the

appellant within the time prescribed under s 144 of the Act nor appealed to the High Court under s 145 of the Act and did not do so for the following reasons, namely:

(a) The parties had agreed on the mode of settling the claim, in that the parties agreed to abide by the decision of the said Tribunal in Case 1/94 which was set up, as discussed earlier, pursuant to art 156 of the Federal Constitution ('Case 1/94'). Article 156, entitled 'Contribution in aid of rates in respect of federal and State property' reads:

> Where lands, buildings, or hereditaments are occupied for public purposes by or on behalf of the Federation, a State or a public authority, the Federation, State or public authority shall not be liable to pay local rates in respect thereof but shall in aid of those rates make such contributions in respect thereof as may be agreed between the Federation, State or public authority, as the case may be, and the authority levying the rates or as may in default of agreement be determined by a tribunal consisting of the chairman of the Lands Tribunal established under Article 87, who shall preside, and two other members of whom each of the parties concerned shall appoint one.

Case 1/94 relates to a reference to the said Tribunal of a disagreement in the quantum of contribution in aid of rates payable by the LLN to, inter alia, Majlis Perbandaran Seberang Prai. The said Tribunal was set up to decide on the liability of LLN to pay 'contribution in aid of rates' on its power stations to Majlis Perbandaran Seberang Perai and four other local authorities, namely, Majlis Bandaraya Johor Bahru, Majlis Daerah Port Dickson, Majlis Daerah Cameron Highlands and Pihak Berkuasa Tempatan Pasir Gudang. By agreement of the parties involved in that reference, the said Tribunal had used the liability of an ordinary ratepayer as a basis of determining the liability for the contribution. The said Tribunal's decision was pronounced on 3 October 1994 and the written decision is dated 14 June 1996. The said Tribunal was of the view that 'electricity can be regarded as an 'article' manufactured by LLN' and 'that plant and machinery should be excluded from calculations'. It was also of the view that 'some of the plant has to be included in the calculations as they come within the ambit of 'building' as defined in s 2 of the Local Government Act 1976'.

(b) In the instant appeal before this court, the arrangement and understanding between the appellant and the respondent is fortified by interim payments of RM400,000 per annum duly made by the respondent and accepted by the appellant from 1 July 1991 up to date. In its reply in relation to this, the appellant contended that there was no agreement to be bound by the said Tribunal's decision and that the interim payments were only temporary, pending final settlement. With regards to this averment, the respondent contended that the appellant is estopped and had waived its right to revert to the original claim, as this has been superseded by subsequent events, particularly the agreement to abide by the said Tribunal's decision in Case 1/94 and by subsequent amended bills/claims on the same matter.

(c) After the said Tribunal's decision was made known to the appellant, the appellant forwarded a revised claim vide an assessment bill dated 5 February 1992 whereby the appellant determined the annual value of the said holding to be RM9,591,000 and that the rate payable is RM479,550.

The claim did not include the value of machinery and the parties later settled the claim at RM400,000 per annum as 'interim payment' pending settlement after negotiation.

(d) Subsequently, the appellant forwarded another revised claim to the respondent vide a letter dated 12 December 1995 whereby the appellant to a certain extent adopted the said Tribunal's decision in Case 1/94 by excluding the value of machinery from its claim. That letter, as translated, reads:

> Sir,
>
> Claim for Assessment for the Sultan Ismail Power Station, Paka.
>
> Reference is made to your letter 14/4/47 dated 15th November 1995 and the conversations between En. Man/Haji Abdullah on 11th December 1995 regarding the above matter. Furnished below are two forms of new claims based on the decision of the Majlis Daerah Dungun's Full Council Meeting, which sat on 30th November 1995.
>
> a) Claim in accordance with the Draft Tribunal decision stated by you at the rate of 5% for land and 6% for building
>
> Annual Value
>
> For Land and Building (not inclusive of machinery)
>
> At the rate for Land @ 5%
>
> Building @ 6% = RM16,197,740
>
> Annual Value @ 5% x 5% as gazetted
>
> Annual Assessment RM 810,000.00
>
> b) Claim based on the rates at 5% for land and 11.5% for building
>
> Annual Value
>
> For Land and Building (not inclusive of machinery)
>
> At the rate Land @ 5%
>
> Building @ 11.5% = RM30,059,335
>
> Annual Value @ 5% x 5%
>
> Annual Assessment RM 1,503,000
>
> 2. We are pleased to inform the Majlis Daerah Dungun Full Council Meeting had made a decision to agree that a settlement be made for claim (a) first whereas for claim (b) it was decided that further negotiations be held with you and any realignment that arises would need to be made separately at a later time.
>
> 3. For your information, Section 147 of the Local Government Act 1976 (Act 171) provided that if any amount liable to be paid in relation to rates which remains unpaid at the end of January or August, the owner is responsible to pay the money together with any payment fixed by the Local Authority from time to time. In this case the Majlis Daerah Dungun has fixed an interest rate liable on the said arrears based on the fixed deposit rate in financial institutions.

> 4. Based on claim (a), the amount that needs to be paid by you includes interest on arrears and fines are as follows:
>
> Annual Assessment
>
> (not including machinery)
>
> For the year 1996 RM810,000.00
>
> Arrears until 1995
>
> (please refer to attachment A) RM2,303,404.50
>
> Total Amount Payable RM3,113,404.50
>
> 5. A detailed calculation is set out in attachment 'A'. Your cooperation and early attention to settle the said payment is grateful and appreciated.

The respondent however was not happy with the above proposal on the ground that the appellant did not comply fully with the principles of the said Tribunal's decision in Case 1/94 and consequently attempted to negotiate the settlement of the matter further.

[25] Thus, on these facts, the respondent reiterated that there was an agreement between the parties that the said Tribunal's decision would be applicable and binding on the appellant's claim. The respondent stressed that it is relying on the estoppel principle and contended that the appellant has waived its right to revert to its original assessment claim as there were amended assessment bills or claims sent to the respondent subsequently.

[26] In its reply to the above contention, the appellant pointed out that the 'interim payments' were only temporary and claimed that it agreed to the respondent's request to accept the 'interim payments' as part payments of the amount owing by the respondent as the respondent was then in the midst of negotiating a settlement. The appellant then further pointed out that despite its revised offer contained in its letter dated 12 December 1995, to date the respondent has failed to pay the sums claimed therein.

JUDGMENT OF THE HIGH COURT

[27] At the end of the day, the learned trial judge dismissed the appellant's claim and the respondent's counterclaim with costs. In his grounds of judgment the learned judge noted that the said Tribunal in its draft decision in Case 1/94 declared as follows:

> LLN has installed various machinery on the land for the purposes of manufacturing products for generating electricity. These machinery although attached securely to the land, are nevertheless machinery within the meaning of Section 2 of the Local Government Act 1976. As such the enhanced value of the machinery should not be taken into consideration in assessing Annual Value of the property and ought lo be exempted.

[28] The learned judge then approached the dispute in the following manner; he said:

There is no dispute that the defendant has received the amendment to the Valuation List as per the Notice and that the defendant has not make any objection in writing to the plaintiff pursuant to s 144 (3) of the Act. However, from the testimonies of witnesses from both parties indulgence was granted by the plaintiff to the defendant to discuss the defendant's objection for the inclusion of plant and machinery in the Power Station in the Notice when ascertaining Annual Value. These oral testimonies are further fortified by documentary evidence in the form of minutes taken at the 1st and 2nd meetings where its contents are accepted by the parties as correct. What was decided (after the Notice) is that the issue of whether to include plant and machinery for calculating Annual Value should be based on the decision of the Land Tribunal. By this, followed with the acceptance of RM400,000 per annum payment from the defendant as interim payment towards the rates of the Power Station, I find that [the] parties have entered into an agreement to delay the effect and enforcement of the Notice to subject it to the ruling of the Land Tribunal on whether to exclude plant and machinery in the calculation of Annual Value. This proposition is further reinforced by the letter of the plaintiff to the defendant of 9 November 1995, where after the decision of the Land Tribunal was handed down the plaintiff offered to the defendant 2 proposals on the rates which excluded plant and machinery from calculation of Annual Value. Though the defendant has refused to indicate which of the 2 proposals is preferred, or not at all, the plaintiff is still not permitted to enforce payment of any rates from the defendant on the Notice. The Notice has been suspended to await the Land Tribunal Decision. And since such decision has been given, the plaintiff is required to amend the Notice to exclude plant and machinery from the calculating Annual Value. This was what is agreed between the parties. The plaintiff cannot renegade (sic) [renege] on this.

Thus, in order to enforce any rates on the defendant an amendment to the Notice must be effected to incorporate the exclusion of plant and machinery from the calculation of Annual Value. Notice must then be given to the defendant under section 144(2) of the Act. If the defendant is aggrieved by this amendment, then under section 144(3) of the Act, the defendant can lay down its objection to the plaintiff within the specified time. When this is set in motion then, the objections of the defendant on the contrasting value of the holdings can be considered, followed by a decision from the plaintiff on this. If the defendant is still dissatisfied with the decision of the plaintiff, then application can be made to this Court to challenge such decision as set out under section 145 of the Act.

This Court, at this stage, is not the proper forum for both parties to express and ventilate their views on the value of the holdings or the manner of calculating Annual Value or the amount of rates payable on the Power Station. The legal processes, as described above, has not been exhausted.

The Notice at the present moment is burdened by the inclusion of plant and machinery, which, by agreement, ought to be excluded. Thus it has no effect for enforcement on the defendant.

Based on this, I dismiss the plaintiff's claim with cost.

As for the defendant's counterclaim, I am also dismissing it with cost. First, I find the agreement between the parties for payment of RM400,000.00 during the interim period is still effective. Second, this Court, once again, is not a proper forum to ascertain what the Annual Value is or on what percentage the rate is to be charged for the Power Station. The defendant cannot arbitrary (sic) determine the rate payable and then imposed it upon the plaintiff in the manner as set out in the set-off and counterclaim in its pleadings. The proper process laid down by law must be adhered to otherwise, it would look as if the defendant, rather than the plaintiff, is the local authority who determines the rates to be paid on a ratable(sic) holding.

JUDGMENT OF THIS COURT

[29] I am of the view that the learned judge erred in law in dismissing the appellant's claim. He held that since 'indulgence was granted' by the appellant to discuss the respondent's objection for inclusion of plant and machinery in ascertaining the annual value of the said holding followed with the acceptance of annual 'interim payments' towards the rates imposed, the parties 'have entered into an agreement to delay the effect and enforcement of the notice to subject it to the ruling of the said Tribunal on whether to exclude plant and machinery in the calculation of Annual Value'. He also held that the said notice 'has been suspended to await the Land Tribunal Decision' and that since such decision has been given, the appellant is required to amend the said notice to exclude plant and machinery in calculating the annual value of the said holding. This, he said, was what was agreed between the parties and the appellant cannot renege on this.

[30] From my reading of his grounds of judgment, the learned judge seem to be of the view that the appellant, by entering into negotiations, no doubt at the instance of the respondent, and by accepting 'interim payments' and by agreeing to abide by the ruling of the said Tribunal, is estopped from imposing the rates that it did on the said holding vide the said notice. It is my view that that is the effect of the learned judge's findings. Thus, the learned judge admitted estoppel against the appellant. This would seem to be his only reason for dismissing the appellant's claim.

[31] I am of the view that the doctrine of estoppel cannot apply to the facts of the case before him. The rates imposed by the appellant vide the said notice has become due and payable as from 1 July 1991 under the Act and to admit estoppel against the appellant, it being a public authority, would have the effect of nullifying the provisions of the Act. To admit estoppel against a public authority, the court must first of all determine the nature of the obligation imposed by the Act on the public authority and then consider whether the admission of an estoppel under the circumstances of the case would nullify the statutory provisions.

[32] According to *Osborn's Concise Law Dictionary* (7th Ed) 'public authorities' are bodies exercising public functions such as local authorities. The appellant is a clearly a public authority. Section 127 of the Act provides that the local authority may, with the approval of the State Authority, impose the annual rate or rates within its local authority area. Section 2 of the Act provides 'State Authority' means the Ruler-in-Council. Section 130 of the Act provides the local authority may assess any rate or rates upon the annual value of holdings or upon the improved value of holdings as the State Authority may determine.

[33] Thus, pursuant to the provisions of the Act, the local authority's duty is to impose the annual rate or rates within its local authority area for the purposes of the Act and the duty of an owner of a holding within the local authority area is to pay for the assessment at the rate determined by the local authority. Under s 137 of the Act the local authority is under a duty to prepare a Valuation List of all holdings within its area not exempted from the payment of rates. That Valuation List shall remain in force until it is superseded by a new Valuation List which shall be prepared

A and completed once every five years or within such time as the State Authority may determine. The local authority has a discretion under s 144(1) of the Act to amend the Valuation List and rates shall be payable in respect of the holding in question in accordance with the Valuation List so amended. Section 144(6) of the Act provides that the new rate shall be payable from the commencement of the next half year or such earlier date as the local authority may determine. Any person aggrieved by an amendment of the Valuation List on any of the grounds specified in s 142 of the Act, one of which is that the holding 'for which he is rateable is valued beyond its rateable value', may make objection in writing to the local authority under s 144(3) of the Act and 'shall be allowed an opportunity of being heard in person or by an authorised agent'. Section 145(1) of the Act provides that any person who having made an objection under s 144(3), if dissatisfied with the decision of the local authority, may appeal to the High Court by way of originating motion provided that with the filing of the motion there shall be paid into the local authority the amount of the rate appealed against.

[34] In the instant appeal, what is clear is that the respondent was aggrieved on the ground that it was of the opinion that the said holding was valued by the appellant beyond its rateable value. The respondent was of the view that in estimating the annual value of the said holding, the appellant had taken into account the 'machinery' used for generating electricity whereas in the definition of the words 'annual value' s 2 of the Act clearly states the enhanced value given to the holding from the presence of machinery for the making of 'any article or part of an article', which to the respondent would include electricity, shall not be taken into consideration, and for the purposes of this paragraph 'machinery' includes steam engines, boilers or other motive power belonging to such machinery. This is the crux of the respondent's grievance.

[35] The said holding, a power station, is situate on two lots of land totalling approximately 83 hectares or 201 acres. As for the land use, the two lots are to be used as a power plant by the respondent and for no other purposes. From the valuation reports of both parties introduced during the trial, there are at least 24 buildings on the site, namely:

(1) Administration Building;
(2) Central Control Building;
(3) Steam Turbine Building;
(4) Electrical Annexe;
(5) Gas Turbine Building and Annexe;
(6) CW Pump House;
(7) Electro-Chlorination Plant House;
(8) Maintenance Workshop & Station Store;
(9) Chemical Laboratory;
(10) Water Treatment Plant House;
(11) Security Office & Station Clinic;
(12) Lubricating Oil & Plant Store;

(13) Chemical Store;

(14) Fuel Oil Pump House;

(15) Fire Water Pump House;

(16) Station Light Store;

(17) Air-Compressor House;

(18) Battery & Ablution House;

(19) Project Engineer's Office;

(20) Car/Motorcycle/Bicycle Sheds;

(21) Switchyards;

(22) Oil Storage Tank Farm;

(23) Waste Heat Recovery Boiler; and

(24) Raw Water Storage Tank House.

[36] A description of the plant and machinery in the said holding is found in the respondent's valuation report; it includes the following:

(1) Fuel Oil Storage Tanks, with pipeworks;

(2) Fire Water Storage Tanks, with pipeworks;

(3) Demineralised Water Storage Tanks, with pipeworks;

(4) Raw Water Storage Tanks (Reservoir);

(5) Fuel Oil Storage Tankyard; the tankyard foundation is constructed to accommodate 6 units of 20,000 tons fuel oil storage tanks in an area of 7.5 acres; the entire surface of the tankyard is finished with concrete

(6) 3 pairs of Waste Heat Boilers and Blast Stacks; these specialised structures/installations are about 115 feet high and constructed of steel beams resting on concrete footings; the foundation of the Boilers and Stacks measure about 119,000 sq ft.;

(7) 3 Switchyards; these specialised structure/installations are laid on coarse gravel and concrete stumps and anchor the transformer towers; they occupy 15.5 acres;

(8) CW Culverts; they stretch far into the sea, incorporating a Navigation Structure located at the start of the intake in the sea;

(9) Steam Pipeworks; these are pipes which connect the boilers, turbines, condensers, heaters, cookers, pumps and other manufacturing machinery in the steam turbine building; they are jointing accessories;

(10) Cable Trenches and Ducts;

(11) Weir Seal Pit; this chamber-like structure is built of concrete and is enclosed on all sides by 4 ft high concrete perimeter walls surmounted with iron railings; the overall length of the Pit is 82 feet and its width varies from 35 feet at the base to 26 feet at the head; at its deepest it is 25 feet underground; the volume is about 62,525 cubic feet;

(12) Oily Water Separator Pits;

(13) CW Screen Pit; this chamber-like structure is built of concrete; the pit measures 43 feet by 82 feet, and it is about 30 feet deep.

[37] Another source of information about the plant and machinery in the said holding can be found in the 'Statement of Machinery' prepared on 31 March 1997 by the respondent's witness, one Ahmad Rashdi bin Jaafar (DW2). The machinery referred to in the statement include the following:

(i) Turbo-alternators;
(ii) Heat Recovery Steam Generator or Waste Heat Boiler;
(iii) Mechanical plants;
(iv) Transformer;
(v) Switchgears
(vi) Water Treatment Plant;
(vii) Cooling Water (cw) Pump and Boiler Feed Pump;
(viii) Cathodic Protection;
(ix) Control and Instrumentation;
(x) HV Switchgear;
(xi) Auxiliary Switchgear;
(xii) High Voltage Transformer;
(xiii) Diesel Generator;
(xiv) CW Pipework;
(xv) Cranes;
(xvi) Cabling and earthing;
(xvii) Water and Steam Pipeworks; and
(xviii) Circulating Cooling Water (cw) Pipeworks

[38] Section 2 of the Act provides that 'holding', inter alia, means any land, with or without buildings thereon, which is held under a separate document of title and 'land' includes things attached to the earth or permanently fastened to anything attached to the earth. What is clear from the above information gathered from the valuation reports of both parties is that there are buildings and structures on the said holding which would clearly fall within the contemplation of the word 'land' as defined in the Act. The valuation reports also gives a description of the plant and machinery in the power station which include oil storage tanks with pipeworks, waste heat boilers and blast stacks constructed of steel beams resting on concrete footings and there are also underground pits. Further, there are turbo-alternators, generators, transformers and boilers which may or may not fall within the contemplation of the word 'machinery' as found in s 2 of the Act under the interpretation of 'annual value'. The respondent's defence is that the appellant has included its machinery in calculating the annual value of the said holding and on that basis the said notice is ultra vires the Act, that electricity is an 'article' and that machinery is exempt from rates by virtue of being chattels. The respondent did not however illustrate or identify which particular machinery would fall within the contemplation of the word 'machinery' as found in s 2 of the Act neither did it point out which machinery was attached to the earth or permanently fastened to anything attached to the earth and

thus fall within the definition of 'land' or 'building' as defined in s 2 of the Act and hence has to be considered by the appellant in estimating the annual value of the said holding. A

[39] In my view, what is clear is that the respondent was aggrieved by the amendment of the valuation list upon receipt of the said notice, namely, on the ground that the said holding was valued beyond its rateable value. That being the position, the respondent has to make an objection in writing to the appellant under s 144(3) of the Act and the respondent 'shall be allowed an opportunity of being heard in person or by an authorised agent'. These words denote that the appellant has to 'hear' the objection and make a decision as to whether the respondent's objection is justifiable, viz, that the said holding was valued beyond its rateable value. The 'hearing' before the appellant would be the proper forum where the respondent can voice its grievances and canvass its case as to which particular machinery on the said holding cannot fall within the contemplation of s 2 of the Act and hence should not be taken into consideration in estimating the annual value of the said holding. The appellant would then be duty bound to make a decision. Consequently, if the respondent is dissatisfied with the decision of the appellant, it may appeal to the High Court by way of originating motion as provided under s 145(1) of the Act but even then, the respondent must pay the amount of the rate appealed against to the appellant notwithstanding it has filed the appeal. Thus, the filing of the appeal does not operate as a stay against payment of the rate imposed. These are the statutory provisions which need to be adhered to by the parties as provided under the Act. But then the respondent did not do what was required of the respondent to do under the Act but instead entered into lengthy negotiations with the appellant which is definitely not what is contemplated under the Act. B C D E

[40] I am of the view that it is prohibited by the doctrine of ultra vires for the respondent to enter into negotiations with the appellant with the view of seeking a reduction of the rate imposed by the appellant instead of resorting to the provisions under the Act if at all it was aggrieved by the rate imposed. I cannot find any provision in the Act which would allow an owner of a holding to 'negotiate' with a local authority with a view to reduce the rate assessed thereon. Section 135 of the Act entitled 'Exemption or reduction of rate' provides 'When any holding or part thereof is used exclusively for recreational, social or welfare purposes and not for pecuniary profit, the State Authority may at its discretion exempt such holding or such part thereof from the payment of all or any rates or may reduce any rate imposed on such holding or such part thereof'. In the instant appeal, the respondent is clearly a commercial undertaking and as such clearly cannot fall within the contemplation of s 135. F G H

[41] What is not disputed is that the respondent did not make an objection in writing to the appellant at any time not less than 14 days before the time fixed for the revision of the Annual List pursuant to s 142 of the Act nor made any objection in writing to the appellant not less than ten days before the time fixed in the said notice pursuant to s 144(3) of the Act. If such objection had been made and after it has been allowed an opportunity to be heard, the respondent, if dissatisfied with the decision of the appellant, would be in a position to appeal to the High Court I

pursuant to s 145 of the Act within 14 days from receipt of that decision. The respondent admitted it never availed itself of these statutory requirements and that being the situation, the rate imposed by the appellant has taken effect from 1 July 1991.

[42] Thus, on the facts, the respondent did not lodge any written objection with the appellant against the said notice, did not pay the annual rate imposed but chose to make annual 'interim payments', on its own volition and estimation at that, which fell far below the annual rate imposed by the appellant and upon being sued for the unpaid balance of the annual rates now raise a defence of estoppel against the appellant and counterclaim, inter alia, for a declaration that the said notice is ultra vires the Act. I cannot see how under such circumstances an estoppel can be raised against the appellant, it being a public authority and a body which is authorised under the Act to impose and collect rates for purposes under the Act. A case on point is *Public Textiles Berhad v Lembaga Letrik Negara* [1976] 2 MLJ 58. In that case, the respondent, ie, the LLN had contracted to supply electricity to the appellant, Public Textiles Berhad, a company which carried on a textile business ('PTB'). By mistake, the LLN had considerably undercharged PTB to the amount of RM84,624.01 and hence claimed that amount from PTB. The learned trial judge held that the LLN was not estopped from claiming that amount although PTB had utilised the accounts rendered by the LLN for the purpose of costing its products. The learned trial judge further held to have admitted the estoppel would have had the effect of nullifying the statutory provisions of the Electricity Act 1949. PTB appealed.

[43] In dismissing the appeal, the Federal Court held, inter alia, that the plea of estoppel by representation cannot be pleaded against a public corporation on which there is imposed a statutory duty to carry out certain acts in the interest of the public and that such public corporation cannot indirectly do, by placing itself under the disability of estoppel, what it could not have directly done by reason of statutory prohibitions. The Federal Court held that the LLN had a statutory duty to perform, viz., to assess PTB for rates in accordance with the prescribed tariff for electricity actually supplied and PTB had a corresponding duty to pay at the scheduled rates for electricity energy consumed and to waive the payment at scheduled rates is prohibited by the doctrine of ultra vires. If the plea of estoppel is allowed, the scheduled rates due in respect of the actual amount of electric energy supplied would be indirectly remitted, which the LLN could not by any act directly remit and to allow the plea of estoppel would therefore be nullifying the statutory provisions of the Act.

[44] In delivering the decision of the Federal Court, Raja Azlan Shah FCJ (as he then was) pointed out that the LLN was a corporate body constituted under s 3 of the Electricity Act 1949 and was accordingly under a statutory duty to secure the supply of energy, to enter into contracts with any person upon such terms and conditions as it may determine and to fix the prices to be charged which shall be in accordance with such tariffs as may, from time to time, be fixed by regulations. The rates must be in exact accordance with the provisions of the First Schedule to the rules made under the Act, viz, 'contracts at scheduled rates'. The LLN had power to amend the schedules and to make charges for energy supplied in different places or

districts on different systems, or while maintaining the same system, at different rates but that power cannot override the statutory duty of the LLN not to show undue preference or undue discrimination as between consumers similarly situated. Monthly bills are rendered by the LLN to the consumer which must be paid within seven days of presentation, failing which the installation may be disconnected without further notice. PTB had entered into a contract with the LLN to buy from it electricity energy at scheduled rates. Due to an error of the LLN's servants, the correct multiplication factor was not applied and thus PTB was not rendered proper bills from the commencement of the contract, ie, 16 December 1970, until the omission was discovered on 29 April 1972. The error resulted in under-billing PTB. The LLN therefore issued a supplementary bill to recover the difference between the amount for which PTB had already been charged and paid, and the amount which should have been charged, had there been no error. The Federal Court was of the view that the only defence that merited consideration before the trial judge was the doctrine of estoppel. In his judgment, Raja Azlan Shah said (at pp 63–64):

> The true test, as it seems to me, is the principle of public interest, that is, whether looking at the Act as a whole and particularly at the relevant provisions, it is framed for the benefit of some third party, or the state or public at large or a section of it. We need to ascertain where the duty is imposed, for whose benefit it is imposed and why it has been imposed. The point has been canvassed in *Kok Hoong v Leong Cheong Kweng Mines, Ltd*. It think it is not inexpedient to quote a passage from the speech of Viscount Radcliffe which expresses, in my view, the correct test (p 308):
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> > It has been said that the question whether an estoppel is to be allowed or not depends on whether the enactment or rule of law relied on is imposed in the public interest or "on grounds of general public policy" (see *Re a Bankruptcy Notic* [1924] 2 Ch 76, per Atkin LJ). However a principle as widely stated as this might prove to be rather an elusive guide, since there is no statute, at least public general statute, for which this claim might not be made. In their lordships' opinion a more direct test to apply in any case such as the present,… is to ask whether the law that confronts the estoppel can be seen to represent a social policy to which the court must give effect in the interests of the public generally or some section of the public, despite any rules of evidence as between themselves that the parties may have created by their conduct or otherwise.
>
> Applying that test, the Electricity Act does not appear to me to be founded on considerations of trade as for the benefit of the public in general. It is enacted to give the Board the sole monopoly in the Federation to generate, distribute and sell electric energy at reasonable prices. Indeed the learned judge in his judgment said that it is conceded by the defence that the Board is a public utility operating under the Act. It has a duty to perform — to assess the appellants for rates in accordance with Tariff E of the First Schedule to the Rules, no more, no less, for electricity actually supplied. Equally, the appellants have a corresponding duty to perform — to pay at scheduled rates, no more and no less, for electricity energy actually consumed. That is a statutory obligation for which the Board is responsible to the Minister who is in turn responsible to Parliament. To waive the payment at scheduled rates is 'prohibited not by the express or implied prohibition of the legislature but by the doctrine of ultra vires'. In other words, if the plea of estoppel is allowed, the scheduled rates due in respect of the actual amount of electric energy supplied which are not irrecoverable, for it has been sued, would be indirectly remitted which the Board could not by any act directly remit. That would be nullifying the statutory provisions of the Act. It seems to me that our case amounts to no more than a reassertion and reapplication of the doctrine of estoppel as laid down in the Maritime Electric Company case and that the

present situation is exactly within the language of Lord Maugham which is in conformity with a long line of previous decisions to be found in 15 *Halsbury's Laws of England* (3rd Ed.)

[45] At the hearing of this instant appeal, counsel for the respondent conceded that the respondent did not fall within the contemplation of art. 156 of the Federal Constitution and quite rightly so. Article 156 only relates to lands, buildings, or hereditaments which are occupied for public purposes by or on behalf of the Federation, a State or a public authority. Such holdings shall not be liable to pay local rates but shall in aid of those rates pay such contributions as may be agreed between the Federation, State or public authority. Disputes will be determined by a tribunal consisting of the chairman of the Lands Tribunal and two others. The respondent is now not the LLN of old and is clearly not a public authority and as such the decision of the said Tribunal cannot have any bearing on the circumstances of this instant appeal. That the parties had agreed to abide by the decision of the said Tribunal in Case 1/94 as a mode of settling this dispute is prohibited by the doctrine of ultra vires. That decision relates to 'contributions in aid of rates' as opposed to liability to pay local rates. Even the title of the land to the said holding shows that the respondent is now its registered owner. The respondent is now a purely commercial undertaking. It is no longer a public corporation and cannot now behave like one.

[46] I am also of the view that the contention of the respondent that the appellant is estopped and had waived its right to revert to the rate specified in the said notice as this has been superseded by subsequent events, including the acceptance of annual 'interim payments' and by subsequent amended bills, cannot stand at all. The amended bills were issued due to the arrangement and agreement between the parties to follow the decision of the said Tribunal in Case 1/94. I have earlier held that such an arrangement or agreement is prohibited by the doctrine of ultra vires and hence any consequence of that would also be bad in law. To admit estoppel under such circumstances would have the effect of nullifying the statutory provisions of the Act. Further, the evidence showed that although prolonged negotiations did take place between the parties for a substantial period of time, the negotiations did not result in a written agreement duly executed by the parties. Be that as it may, it must be remembered that an estoppel is only a rule of evidence and could not avail to release the respondent from an obligation to obey the Act nor could it enable the respondent to escape from statutory obligation to pay the rate imposed by the appellant. The respondent's liability as a ratepayer is not a private debt but a public obligation. The appellant has to perform the duties and exercise the powers specified in the Act. As a local authority, it would require revenue to perform its duties. Section 63 of the Act provides it shall have the general control and care of all places within the local authority area which have been or shall be at any time set apart and vested in the appellant for the use of the public or to which the public shall at any time have or have acquired a common right. It may erect and maintain in any open public place buildings for public purposes. Section 72 of the Act provides certain powers to a local authority in relation to sanitation, the erection and managing of markets, lodging houses, stalls, public lavatories and abattoirs. It has also the power to safeguard and promote the public health, for example, to take all necessary and reasonably practical measures for preventing the occurrence of any infectious, communicable or preventable diseases. To carry out its duties the appellant requires

revenue. Section 39 of the Act states that the revenue of a local authority shall consist of all taxes, rates, rents, licenses, fees, dues and other sums of charges payable to the local authority by virtue of the provisions of the Act or any other written law. Thus, one of the principal source of revenue for the appellant, like any other local authority, is rates.

[47] I would agree with the submission of counsel for the appellant that the annual assessment rate of RM6,150,000 as specified in the said notice has become final and conclusive and thus the liability of the respondent to pay the same has been determined under the provisions of the Act. Unless the rate imposed under the said notice is challenged in the specific manner laid down in ss 144 and 145 of the Act, the rates become due and payable by the respondent. In relation to these two sections, learned counsel for the appellant in his written submission referred to *Yee Seng Rubber Co Sdn Bhd v The Commissioner of the Federal Capital of Kuala Lumpur* [1972] 2 MLJ 21. In that case, provisions similar to ss 144 and 145 of the Act found in the predecessor statute, viz., the Town Board Enactment of FMS (Cap 137) were considered by Yong J. In that case, the ratepayer had appealed to the High Court against the decision of the Commissioner of the Federal Capital of Kuala Lumpur on the assessment of its holdings but only paid into court the amount of the rate appealed against some three months after the due date whereas s 44(i) of the Town Boards Enactment (Cap 137), the forerunner of the Local Government Act 1976 provides 'Any person who… is dissatisfied with the decision of the Board… may appeal to the Supreme Court: provided that with the presentation of the petition of appeal there shall be paid into court the amount of the rate appealed against'. Section 44(ii) provides every such appeal shall be commenced within fifteen days of the date of the certificate of the board. In dismissing the appeal the learned judge said (at p 21):

> One can well understand why this condition was imposed by the legislature. Frivolous appeals are often filed for the purpose of delaying payment of rates which the Town Board needs for running its public services of the town and its administration. This condition was obviously designed to prevent this mischief. It is also common knowledge that such appeals would not be heard for a considerable period of time, sometimes for months if not years.
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> The question before the court is: Where jurisdiction is given to a court by statute, upon certain terms or conditions, would non-compliance thereof prevent such jurisdiction from arising? After consulting various authorities, including the following I came to the conclusion that it would.

The learned judge subsequently held:

> I hold that s 44(i) is a mandatory provision which goes to the jurisdiction of the Court. It is not directory and cannot be waived.
>
> I further hold that this court's jurisdiction to entertain appeals from the Board of the Federal Capital of Kuala Lumpur now known as the City of Kuala Lumpur was given by statute (Town Boards Enactment Cap 137) upon certain terms and conditions as prescribed by its s 44(i) and that unless these terms or conditions are complied with the court's jurisdiction does not arise.

[48] Thus, in the instant appeal, the door to challenge the rate imposedvide the said notice would seem to be closed to the respondent under the circumstances

discussed earlier. The position seems to be similar in England. In *The Mayor, Alderman and Councillors of the Metropolitan Borough of Stepney v John Walker & Sons, Limited* [1934] AC 365, cited by learned counsel for the appellant in his written submission which is a rating case involving the interpretation of the Rating & Valuation (Apportionment) Act 1928 Lord Warrington of Clyffe said (at pp 380–381):

> As to question (II). In Act of 1869 a complete and easily understood code is laid down for the purpose of enabling objections, either by a ratepayer or other specified persons, to acts of the Assessment Committee or the rating authority to be considered and dealt with either by those bodies themselves or, in case of necessity, by judicial authority. In the present case all necessary notices were given so that the respondents were at all times in a position effectually to obtain relief under the statutory provisions. It is difficult to understand why the respondents deliberately, as it is said abstained from resorting to the statutory provisions. They say they did so because until the decision of Quarter Sessions in reference to the Special List under the Act of 1928 had been set aside, an appeal in respect of the Quinquennial List would probably have failed. But, assuming that to be so, it can afford no excuse for having abstained from taking steps which would at least have kept their claims alive. In fact it was not until April 1932, long after the Quinquennial List had come into force, that they raised their present claim.
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> In my opinion, this is one of those cases in which the Legislature has provided suitable means whereby persons aggrieved by the action of the rating authorities can obtain the removal of that grievance, and I am of the opinion that when that is so it must be inferred that those means are intended to be exclusive: see *Rex v City of London Assessment Committee* [1907] 2 KB 764. On this point I agree with Romer LJ. We were told that it is hard that for the rest of the Quinquennial period the respondents will be deprived of the benefits of the Acts of 1928 and 1929. The answer is that any hardship is the result of their own failure to avail themselves of the procedure open to them under the statute.

[49] Under the circumstances of this instant appeal, I do not think that it was necessary for the learned judge to determine whether the appellant had properly exercised its power when determining the annual value of the said holding or that it had correctly interpreted the provisions of the Act when it took into account 'plant and machinery' in determining the annual value of the said holding. As stated earlier, the correct platform for an aggrieved owner of a holding to ventilate such issues would be the 'hearing' or enquiry before the local authority appellant as contemplated by ss 142 and 144 of the Act. If he is dissatisfied with the decision of the local authority, he can appeal to the High Court by way of originating motion as provided for under s 145 of the Act. That High Court would then be the proper forum to ventilate and determine the issues of whether the computation of annual value of the holding concerned and annual assessment of rates payable thereunder were determined within the precinct of the Act. In the instant appeal, the learned judge had dismissed the respondent's counterclaim for the sum of RM1,174,554 and quite rightly so as the respondent was still in arrears. The respondent cannot on its own volition decide what should be the annual value or annual rate for the said holding and thus cannot now indirectly claim that it has overpaid. I am of the also of the view that the learned judge was right, although for different reasons, in dismissing the respondent's claim for a declaration that the said notice issued by the appellant pursuant to s 144 of the Act is ultra vires and also null and void. The appellant was carrying out its public duty when it issued the said notice and it

cannot be deprived of its duty and power to do so and further cannot be prevented by any estoppel from performing its statutory or other public obligation which is exercised in the general public interest. The Act lays down a duty to exercise a discretion which is intended to be performed or exercised for the benefit of the public. The said notice surely cannot be the subject of such a declaration sought for merely on the basis that it is the respondent's opinion that the said holding was valued beyond its rateable value. The Act defines what is 'annual value' of a holding and its definition contemplates a tenancy agreement between two parties with the annual rental that a landlord might reasonably be expected to let the holding to the tenant being termed the 'annual value' for rating purposes. The appellant clearly has a wide discretion to determine the annual value of any holding by using whatever method of valuation that appears appropriate to arrive at the annual value.

[50] For the reasons discussed above, this court unanimously allowed the appellant's appeal and granted the orders prayed for in paras. (a), (b) c) and (d) of its amended statement of claim with costs here and below and accordingly dismissed the appeal by the respondent on its counterclaim with no order as to costs. It was also ordered that the deposit is to be refunded to the appellant.

[51] My learned brothers Augustine Paul FCJ and Mokhtar Sidin JCA have seen this judgment in draft and have conveyed their agreement thereto.

Appeal allowed. Cross appeal dismissed.

Reported by Loo Lai Mee